

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA ex rel.
Christian M. Heesch,

Plaintiff,

v.

DIAGNOSTIC PHYSICIANS GROUP, P.C.;
IMC - DIAGNOSTIC AND MEDICAL
CLINIC, P.C.; INFIRMARY MEDICAL
CLINICS, P.C.; and INFIRMARY HEALTH
SYSTEM, INC.

Defendant.

Civil Action No. 11-364-KD-B

Oral Argument Requested

**INFIRMARY DEFENDANTS' MOTION TO DISMISS
RELATOR'S THIRD AMENDED COMPLAINT**

Defendants IMC - Diagnostic and Medical Clinic, P.C. ("DMC"), Infirmity Medical Clinics, P.C. ("IMC"), and Infirmity Health System, Inc. ("IHS") (collectively, the "Infirmity Defendants") hereby move the Court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Relator's Third Amended Complaint (Doc. 66) as to the Infirmity Defendants because the Infirmity Defendants are not proper defendants in the Relator's action against his employer for retaliation and wrongful discharge. The Relator failed to meet the minimum pleading requirements of Fed. R. Civ. P. 8 as to any Infirmity Defendant. The Relator does not allege that he was an employee, agent, or contractor of any Infirmity Defendant. He also does not identify any retaliatory behavior by any Infirmity Defendant, much less retaliatory behavior "because of" any protected activity by the Relator. The Infirmity Defendants did not (and do not) even have the capacity to discriminate against the Relator in the terms and conditions of his employment, nor the capacity to provide the relief he requests and that provided by statute.

This motion is supported by an accompanying Brief in Support of Infirmity Defendants' Motion to Dismiss the Relator's Third Amended Complaint. The Infirmity Defendants request oral argument pursuant to Local Rule 7.3 if the Court believes oral argument would assist in the disposition of this motion.

Dated: December 30, 2013

Respectfully submitted,

/s/ Caine O'Rear III

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and Medical Clinic, P.C., IMC - Northside
Clinic, P.C., Infirmary Medical Clinics, P.C.,
and Infirmary Health System, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record.

Dated: December 30, 2013

/s/ Caine O'Rear III
Caine O'Rear III